



Public Notice

U.S. Army Corps
of Engineers
Buffalo District
CELRB-TD-R

Applicant:
U.S. Army Corps of
Engineers, Buffalo District

Published: FEBRUARY 1, 2012
Expires: MARCH 1, 2012

Application No: Regional Permit No. 97-000-1
Section: NY 404 and 10

All written comments should reference the above Application No. and be addressed to:
Buffalo District U.S. Army Corps of Engineers
Regulatory Branch (Attn: Margaret Crawford)
1776 Niagara Street
Buffalo, New York 14207-3199

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

**Application for Permit under Authority of
Section 10 of the Rivers and Harbors Act of 1899 and
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

The District Commander, U.S. Army Corps of Engineers District, Buffalo, New York, is considering, on behalf of the general public, reissuance of Regional Permit 97-000-1 for minor discharges of dredge or fill material with minor channel work. All work shall occur in conjunction with the County Soil and Water Conservation Districts in non-navigable waters of the United States within the following counties: Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Schuyler, Steuben, Tioga, Tompkins and Wyoming, of the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo. This action is being taken in accordance with Title 33 of the Code of Federal Regulations (33 CFR) Parts 320 through 330 as published in the November 13, 1986 Federal Register, Volume 51, No. 219.

Within the past four years, it is estimated that approximately 113 projects have been approved by this permit. The Corps is proposing a number of changes to the Regional Permits, some of which are minor in nature and made in attempt to make the document and procedures more clear to the general public (e.g., transfer requirements, etc.). These 'minor' changes have not been called out in this Public Notice, but the complete details of the proposed Regional Permits are described in the attached text. Proposed changes to Regional Permit No. 97-000-1 include the following:

- a. This office proposes to include the 2012 version of Nationwide Permit (NWP) Nos. 13 and 33, which authorizes bank stabilization and temporary construction activities, to this permit. The

NWPs were previously incorporated into the Regional Permit to prevent confusion between the two authorizations and to further streamline the decision making process. The current Nationwide Permit program is set to expire on March 18, 2012. Once Nationwide Permit Nos. 13 and 33 have been modified and reauthorized, their terms and conditions will be added into this permit. Note that these changes have not been made in the attached Regional Permit.

- b. General Condition No. 1 was modified to require a request for time extension to the Regional Permit at least 30 days prior to the expiration date rather than 3 months. This was done to make it consistent with the Corps' Standard Operating Procedures.
- c. Special Condition 2(i) was modified to replace 'hay bales' with 'straw bales.'
- d. Special Condition No. 18 (previously 19) was modified to require seeding with a native plant mix.
- e. Special Condition No. 21 was added to require planting native woody vegetation along riparian buffer areas in conjunction with bank stabilization projects whenever feasible.
- f. This office plans to modify Special Condition No. 23 (previously 10) and Exclusion No. 7 (previously 11) to reflect current procedures and wording regarding Federally threatened and endangered species. The Corps will modify this condition and exclusion to be consistent with the Buffalo District Regional Conditions for the 2012 Nationwide Permits that will be published in March 2012.
- g. Previous Exclusion Nos. 4 and 5 were relocated and modified into Special Condition No. 24 to require pre-construction notification for activities which may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.
- h. Previous Exclusion Nos. 7 and 8 were relocated and modified into Special Condition No. 25 to require pre-construction notification for activities within the National Wild and Scenic River System or on rivers currently being studied (see condition for details).
- i. The Ontario County Soil and Water Conservation District has verbally requested that the Corps include the southern towns within the County, as they contain similar stream types as NY's southern tier. At this time the Corps is considering this request and is soliciting comments on this proposal.

If this permit is reissued, the attached terms and conditions would apply.

Complete details of the above proposed Regional Permit are described in the attached text.

Comments or questions pertaining to the work described in this notice should be reference the Application Number and be directed to the attention of Margaret Crawford, who can be contacted at the above address, by calling (315) 704-0256, or by e-mail at: margaret.a.crawford@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The following authorization(s) may be required for this project:

Water Quality Certification (or waiver thereof) from the New York State Department of Environmental Conservation.

Due to the scope of the Regional Permit, a determination of effect to registered historic properties or

properties listed as being eligible for inclusion in the National Register of Historic Places has not been made. An effects determination for historic properties will be made on a project by project basis during the review process. Reference is made to General Condition No. 2 and Special Condition No. 23 of the attached Regional Permit.

In addition, due to the scope of the Regional Permit, a determination of effect upon species proposed or designated by the U.S. Department of the Interior as threatened or endangered has not been made. An effects determination for endangered species will be made on a project by project basis during the review process. Reference is made to Special Condition No. 22 and Exclusion No. 7 of the attached Regional Permit No. 97-000-1. The Corps requests assistance from the Service to determine if a table should be appended to the Regional Permit to be consistent with other Regional Permits and improve efficiency of the use of this Regional Permit.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including

the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SIGNED

Diane C. Kozlowski
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.

DEPARTMENT OF THE ARMY PERMIT

Permittee: Stephen H. Bales
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Regional Permit No.: 97-000-1

Processing No.:

Effective Date:

Expiration Date:

Affirmation Date:

Issuing Office: U.S. Army Engineer District, Buffalo
1776 Niagara Street
Buffalo, New York, 14207-3199

IMPORTANT:

Prior to commencing the activity authorized by this permit or directing a contractor to perform such activity on your behalf, be sure that all parties read, understand and comply with the terms and conditions of this permit.

Non-compliance with any of the terms or conditions of this permit may result in an order to remove the activity; civil and/or criminal penalties or both.

AUTHORITIES: You have been authorized to undertake the activity described below pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344)

AUTHORIZED ACTIVITY: Discharges of dredged or fill material associated with minor channel work, as defined under Special Condition #3, performed in conjunction with County Soil and Water Conservation Districts (SWCD) or the Natural Resources Conservation Service (NRCS) and which have received written affirmation of permit applicability from the U.S. Army Engineer District (USAED), Buffalo or the appropriate NRCS or SWCD official acting under the written authority of the commanding officer of USAED, Buffalo.

LOCATION OF THE AUTHORIZED ACTIVITY: Waters of the United States that are located within the following Counties of New York State: Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Schuyler, Steuben, Tioga, Tompkins or Wyoming. Navigable Waters as defined under Section 10 of the Rivers and Harbor Act of 1899 are excluded from this regional permit.

The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided there is full compliance with the following general and special conditions.

The District Commander reserves the right to include any additional special conditions or require an individual permit as may be necessary to safeguard the public interest or protect important public resources on a case by case basis.

401 WATER QUALITY CERTIFICATION: The New York State Department of Environmental Conservation (NYSDEC) has issued Section 401 Water Quality Certification for this permit except for the following instances:

- a. Bank stabilization projects that exceed 200 linear feet per landowner.
- b. Projects where the excess dredged or fill material will be deposited in floodplains as defined by the NYSDEC.
- c. Bank stabilization projects which entail solely the use of gravel or small cobbles with no other stabilizing structures or material.

For projects that fall under these criteria, the permittee must receive Individual Water Quality Certification from the appropriate NYSDEC Regional Office.

NOTE: When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date on the last page of this permit and forward a copy of the permit to this office to validate the transfer of this authorization.

NOTE: The term "you" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least thirty (30) days before the respective date(s).

2. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
3. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
4. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual standard permit or any letter of permission.

SPECIAL CONDITIONS:

1. This permit shall apply only to those activities specified in Special Condition #3 which are conducted by, or for, any person or agency formally registered as a cooperating landowner with the Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Schuyler, Steuben, Tioga, Tompkins or Wyoming County SWCDs or the NRCS and the activity is sanctioned by the respective NRCS or SWCD.
2. Construction Best Management Practices (BMP's): Unless specifically approved otherwise, the following BMP's must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts:
 - i.) Mulch, straw bales, silt fences, or other means must be properly employed to minimize erosion and migration of sediments during construction. Temporary measures must be removed upon completion.
 - ii.) Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.).
 - iii.) All excess excavated material remaining on-site must be properly contained and permanently stabilized to prevent erosion.
 - iv.) Upon project completion, impacted land surfaces must be permanently stabilized to prevent erosion.
 - v.) Upon project completion, impacted aquatic sites must be restored to their original contours and conditions.
 - vi.) All return flow shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions.

vii.) No in-stream work shall occur during predicted periods of high flow.

viii.) No interruption of water flow shall occur during construction in order to sustain aquatic life downstream.

3. This permit is limited to:

a. Removal of material from recently formed gravel bars and deposit areas (within the past 18 months) using mechanized land clearing equipment (e.g. bulldozer, gradall, etc.) when it is necessary to re-establish the natural flow channel following an unusual high flow event or it is an integral part of a larger overall project with an approved design.

b. Bank stabilization utilizing on-site materials (e.g. cobbles, rock, trees) to reduce erosion for a maximum of 500 linear feet per landowner, where this represents the best management practice for the particular project site as determined by SWCD, NRCS, New York State Department of Environmental Conservation (NYSDEC) or the Buffalo District; or where other Best Management Techniques are demonstrated by the applicant to be economically infeasible.

c. Minor realignment of the stream channel when associated with culvert and bridge repair/replacement, not to exceed a total of 200 linear feet.

d. Blocking of channel braids within one (1) year of formation to maintain normal channel flow when it is necessary to re-establish the natural flow channel following an unusual high flow event or it is an integral part of a larger overall project with an approved design.

e. Bank stabilization activities as authorized by Nationwide Permit No. 13, as attached, including the New York State Department of Environmental Conservation Water Quality Certification and any subsequently approved Regional Conditions.

f. Temporary construction, Access, and Dewatering activities as authorized by NWP 33, as attached, including the New York State Department of Environmental Conservation Water Quality Certification and any subsequently approved Regional Conditions.

Special Conditions Applicable to Activities Authorized under Special Condition 3.a.:

4. Removal of material from gravel bars and deposit areas is restricted to areas of streambed with a substrate composed mainly of gravel or cobbles. Gravel bars and deposit areas containing a high composition of silt, clay and/or fine sands, are excluded from this authorization. Removal of stream gravel for the express purpose of subsequent use or sale (i.e. gravel mining) is not authorized by this permit.

5. For projects which propose the removal of gravel bar or deposit area material from a previously authorized location, the NRCS or SWCD personnel shall identify the source of the

problem and if feasible, provide a long term solution to resolve the situation. This information shall be submitted with the permit application.

Special Conditions Applicable to Activities Authorized by Special Condition 3.b.:

6. Bank stabilization projects which entail solely the use of gravel or small cobbles with no other stabilizing structures or material and/or exceed 200 linear feet per landowner must receive Individual Water Quality certification from the appropriate NYSDEC regional office.
7. Fluvial geomorphology restoration techniques, natural stream design and/or bioengineering techniques for stream bank stabilization should be considered in project design when feasible and practicable. Natural stream design measures include, but are not limited to, the installation of cross vanes, j-hook vanes, and log revetments that will serve to protect eroded banks, reduce the amount of fill into the aquatic environment, and reduce the amount of cumulative impacts to individual watersheds. Bioengineering methods include: planting native vegetation such as grey dogwood (*Cornus racemosa*), silky dogwood (*Cornus amomum*), arrowwood viburnum (*Viburnum dentatum*), or other appropriate species to improve habitat for fish and wildlife; the installation of coir (coconut fiber) logs, willow wattles, dogwood fascines; and use of erosion control fabric. A brief explanation of why these techniques cannot be incorporated into the proposed project shall be included with the permit application.
8. Trees shall only be used for bank stabilization when designed as tree revetment structures, properly cabled and anchored to the banks.
9. Bank protection involving the use of on-site gravel bar and deposit materials to repair eroding banks shall be achieved by transferring the materials from the gravel bar to the eroding bank with a backhoe or rubber-tired front-end loader. Use of a bulldozer for this purpose shall be avoided unless the new/realigned channel can first be constructed primarily in the dry, starting at the downstream end.

Special Conditions Applicable to All Activities:

10. The applicant, NRCS, or SWCD shall contact the appropriate NYSDEC-Region office to determine the stream classification. To preclude adverse impacts to indigenous fish species, no in-water work shall be performed:
 - in warm water streams from March 15 through July 15
 - in cold water streams from October 1 through May 15
 - in Rainbow trout streams from November 1 through June 15
11. All new stream channels shall be designed with a parabolic shaped bottom, or be otherwise designed to concentrate flows during low water periods. The new channel shall not be wider and the bottom elevation shall not be lower than the adjoining natural upstream and downstream sections.

12. No in-stream work shall occur during periods of high stream flows.
13. No interruption of water flow shall occur during construction in order to sustain aquatic life downstream.
14. All authorized work shall proceed to completion without interruption between operations whenever practicable.
15. Access across the stream shall be confined to a single ford.
16. Whenever feasible, bank grading and gravel bar and deposit area material removal shall be carried out by land-based equipment rather than from the streambed or flowing water.
17. All erosion, sediment and turbidity controls shall be installed prior to any grading and filling activities. They shall remain in place until construction is complete and the area restored.
18. All stream banks disturbed as a result of any activity authorized by this General permit shall be seeded with a native plant mix and mulched immediately upon completion of bank work, unless otherwise protected from erosion.
19. That under no circumstances shall dredged or fill material be sidecast or temporarily stockpiled in waters of the United States, including wetlands.
20. All excess dredged or fill material not used for bank stabilization shall be deposited on upland property well removed from waters of the United States, including wetlands, and shall be properly stabilized to prevent re-entry into these waters. If the dredged material is temporarily stored on upland property, adjacent to the dredge site, it shall be contained by a filter fabric or hay bale fence to prevent erosion.
21. Whenever feasible, all projects involving bank stabilization shall include planting native woody vegetation along riparian buffer areas on each side of the stream for the length of the project unless the topography of the site (i.e. slopes measuring 1:2 or steeper, bedrock, etc.) prevent plantings.
22. Before equipment is removed from the work site and the project is considered complete, the cooperator or his/her contractor shall contact the project manager at the NRCS or SWCD and arrange for an on-site inspection. The cooperator or his/her contractor shall perform all modifications and/or corrective measures, as designated by the NRCS or SWCD, necessary to bring the project into compliance with the terms and conditions of this permit.
23. **Endangered Species:** The application must include a written statement indicating if any federally listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. Please note that there are no known threatened or endangered (T&E) species under the jurisdiction of the National Marine Fisheries Service within the Buffalo District. Therefore, all requests for information regarding the presence of T&E species should be directed to the US Fish & Wildlife Service (USFWS). The application must include a copy of any correspondence from the USFWS regarding the

presence of T&E species or evidence that the applicant has utilized the USFWS T&E website: <http://www.fws.gov/northeast/nyfo/es/esdesc.htm> (Click on "Consultation" for a step-by-step process.) Website evidence shall include a County list of T&E species. For projects located in counties containing T&E species, the application shall also include a discussion of potential T&E habitat within the project site. If there is potential habitat for any federally listed species within the project site:

- 1) send the results of any habitat surveys
- 2) A detailed description of the proposed project, including approximate proposed project construction schedule and project activities (e.g., land clearing, utilities, stormwater management).
- 3) A description of the natural characteristics of the property and surrounding area (e.g., forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).
- 4) A description of the area to be impacted by the proposed project, including trees to be removed.
- 5) The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 Minute Topographic Quadrangle (Quad) with the name of the Quad(s) and latitude/longitude clearly labeled.
- 6) A description of conservation measures to avoid or minimize impacts to listed species.

24. Cultural Resources: **Pre-construction notification (PCN)** and written affirmation from this office of the applicability of this permit is required for activities which may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. In order for the Buffalo District to determine if National Historic Preservation Act Section 106 consultation is required, all PCNs must include a written statement indicating if any properties listed or eligible for listing, in the National Register of Historic Places may be affected by the proposed project. A copy of any completed survey reports shall be provided with the PCN. If a survey has not been performed then the statement shall include a list of resources checked in the determination. Copies of any available correspondence from NYS Office of Parks, Recreation, and Historic Preservation (SHPO) regarding historic properties shall be provided with the PCN. Information regarding cultural resources may be found at: <http://nysparks.state.ny.us/shpo/index.htm>. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally

significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

25. **Pre-construction notification** and written affirmation from this office of the applicability of this permit is required for all activities located within a component of the National Wild and Scenic Rivers (NWSR) System, or on rivers currently being studied at the direction of Congress as potential additions to the NWSR System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. The portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. No activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. In addition, pre-construction notification and written affirmation from this office of the applicability of this permit is required for all activities located within areas listed in the Nationwide Rivers Inventory (list is available at: <http://www.nps.gov/nrc/programs/rtca/nri/states/ny.html>). Activities located in the above areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

EXCLUSIONS:

This permit does not apply to:

1. Sites within the permit area that are located within Navigable Waters, as defined under Section 10 of the Rivers and Harbors Act including but not limited to the following: Allegheny Reservoir, Allegheny River from the NY/PA border to the upstream City limit of Olean, Buffalo River from Lake Erie to 7.1 miles upstream, Cattaraugus Creek from the mouth to 3/4 mile upstream, Cayuga Inlet, Cayuga Lake, Erie Canal, Lake Erie, the Genesee River from Lake Ontario to Black Creek at Belfast, Niagara River, Scajaquada Creek from the Niagara River to 130 feet downstream of Niagara Street, and Seneca Lake, New York.
2. Sites within the permit area that are located within the New York State Coastal Zone Management Area.
3. Areas where the dredged material is known to be contaminated with toxic organic compounds and/or heavy metals.

4. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this regional permit.

5. State designated freshwater wetlands, significant fish and wildlife habitats including candidate designations, important agricultural lands and those which will be designated by the State in the future, historic resources on the State Register of Historic Places, and resources which are a part of the State Nature and Historic Preserve Trust, when these resources lie within the designated New York State Coastal Area.

6. Any freshwater wetland as defined in Title 33 of the Code of Federal Regulations, Parts 320 et. seq., or other special aquatic site as defined in the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material at Title 40 of the Code of Federal Regulations, Part 230, when the specific site area is a vegetated shallow, pool and riffle complex or mudflat area that the State has specifically designated as an important fish spawning or nursery area or significant fish and wildlife habitat, or is designated as such in the future, or the District Engineer has determined to be an ecologically sensitive area.

7. Activities which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act (ESA) of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. No activity is authorized under this Regional Permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the Critical Habitat of such species. Authorization of an activity by this Regional Permit does not authorize the 'take' of a threatened or endangered species as defined under the ESA. In absence of separate authorization (E.G., an ESA Section 10 permit, a Biological Opinion with 'incidental take' provisions, etc.) from the U.S. Fish and Wildlife Service, both lethal and non-lethal 'takes' of protected species are in violation of the ESA.

Note: Limitations in items 4 through 7 above do not apply to any authorized activity when the work is for the benefit and uses of the site and is specifically endorsed, in writing, by the responsible Federal and State government officials such as the State Historic Preservation Officer, Refuge Manager, Regional Directors of U.S. Department of the Interior Offices such as the National Park Service and the U.S. Fish and Wildlife Service, etc.

8. Activities performed or proposed, unless the property owner has submitted a written request for authorization describing the activity, and the District Commander or authorized agent has determined that it complies with the terms and conditions of this permit.

LIMITS OF THIS AUTHORIZATION

1. The granting of this permit does not obviate the need to obtain other Federal, State or local authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24 or 34 may be required from the New York State Department of Environmental Conservation.
2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.
3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.
3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension,

modification, and revocation procedures contained in Title 33 of the Code of Federal Regulations Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Copy of Signed Original Available Upon Request

District Commander

Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

Transferee

Date